IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 16, 2006 Session

BARBARA HAMILTON EX REL. EVELYN H. TATE v. METROPOLITAN HOSPITAL AUTHORITY

Appeal from the Circuit Court for Davidson County
No. 04C-408 Hamilton Gayden, Judge

No. M2006-00113-COA-R3-CV - Filed September 28, 2007

This appeal involves an elderly nursing home patient who was injured by an accidental fall at the Bordeaux Long Term Care facility. The patient filed a negligence action against the Metropolitan Hospital Authority in the Circuit Court for Davidson County. After the patient was diagnosed with Alzheimer's disease, dementia, and delusions, the trial court permitted the complaint to be amended to enable her daughter to continue the case on her behalf. Following a one-day bench trial, the trial court found that the plaintiff failed to meet her burden of proof to show both that the injury to her mother was reasonably foreseeable and that the Authority's actions or inactions were a proximate cause of the fall. We have determined that the evidence in the record fully supports the trial court's judgment. Accordingly, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which PATRICIA J. COTTRELL, J., joined. WILLIAM B. CAIN, J., not participating.

Phillip L. Davidson, Nashville, Tennessee, for the appellant, Barbara Hamilton.

Jennifer Bozeman, John L. Kennedy, and Elizabeth A. Sanders, Nashville, Tennessee, for the appellee, Metropolitan Hospital Authority.

MEMORANDUM OPINION[1]

I.

Evelyn H. Tate was an eighty-five-year-old resident of the Bordeaux Long Term Care facility, a nursing home operated by the Metropolitan Hospital Authority. She had been diagnosed with Alzheimer's disease, dementia, psychosis, delusions, and a variety of physical ailments. On January 23, 2004, Ms. Tate fell at the doorway of her room and broke her hip. A nurse in the hallway heard Ms. Tate raise her voice shortly before the accident but was unable to reach the room quickly enough to stop Ms. Tate from falling.

Upon arriving at Ms. Tate's room, the nurse observed another Alzheimer's patient standing in the room approximately fifteen feet away from Ms. Tate. Ms. Tate claimed that the other resident had pushed her, causing her to fall. However, the other resident had no history of aggressive behavior toward other patients, and it was not unusual for patients to be in one another's rooms as "wandering" is an important and encouraged part of the treatment of patients with Alzheimer's disease.

On February 10, 2004, Ms. Tate filed a complaint for negligence against the Metropolitan Government of Nashville and Davidson County in the Circuit Court for Davidson County. The complaint was amended on June 2, 2004 to name the Authority as the proper defendant. The complaint was amended a second time on December 7, 2004, to allow Ms. Tate to change her theory of the case. It was amended yet again on March 15, 2005, to tweak the factual allegations. The complaint was amended one last time on September 22, 2005, to allow Ms. Tate's daughter, Barbara Hamilton, to proceed on her behalf following a finding that Ms. Tate was no longer mentally competent to proceed.

Following a one-day bench trial, the trial court entered a judgment on January 3, 2006, in favor of the Authority. The trial court concluded that Ms. Hamilton failed to prove by a preponderance of the evidence both that the Authority's actions were a proximate cause of Ms. Tate's injuries and that the risk of harm to Ms. Tate was reasonably foreseeable. Ms. Hamilton appealed.

---

[1] Tenn. Ct. App. R. 10 provides:

> The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

II.

The standards this court uses to review the results of bench trials are well-settled. With regard to a trial court's findings of fact, we will review the record de novo and will presume that the findings of fact are correct "unless the preponderance of the evidence is otherwise." Tenn. R. App. P. 13(d). We will also give great weight to a trial court's factual findings that rest on determinations of credibility. *In re Estate of Walton*, 950 S.W.2d 956, 959 (Tenn. 1997); *Sikora v. Vanderploeg*, 212 S.W.3d 277, 284 (Tenn. Ct. App. 2006). If, however, the trial court has not made a specific finding of fact on a particular matter, we will review the record to determine where the preponderance of the evidence lies without employing a presumption of correctness. *Cumberland Bank v. G & S Implement Co.*, 211 S.W.3d 223, 228 (Tenn. Ct. App. 2006).

Reviewing findings of fact under Tenn. R. App. P. 13(d) requires an appellate court to weigh the evidence to determine in which party's favor the weight of the aggregated evidence falls. There is a "reasonable probability" that a proposition is true when there is more evidence in its favor than there is against it. *Chapman v. McAdams*, 69 Tenn. (1 Lea) 500, 506 (1878); *see also* 2 *McCormick on Evidence* § 339, at 484 (Kenneth S. Broun ed., 6th ed. 2006) (defining "proof by a preponderance" as "proof which leads the [finder of fact] to find that the existence of the contested fact is more probable than its nonexistence"). Thus, the prevailing party is the one in whose favor the evidentiary scale tips, no matter how slightly. *Parks Props. v. Maury County*, 70 S.W.3d 735, 741 (Tenn. Ct. App. 2001); *Realty Shop, Inc. v. RR Westminster Holding, Inc.*, 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999).

Tenn. R. App. P. 13(d)'s presumption of correctness requires appellate courts to defer to a trial court's findings of fact. *Nashville Ford Tractor, Inc. v. Great Am. Ins. Co.*, 194 S.W.3d 415, 425 (Tenn. Ct. App. 2005). Because of the presumption, an appellate court is bound to leave a trial court's finding of fact undisturbed unless it determines that the aggregate weight of the evidence demonstrates that a finding of fact other than the one found by the trial court is more probably true. *Parks Props. v. Maury County*, 70 S.W.3d at 742. Thus, for the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect. *Smith v. Tenn. Farmers Life Reassurance Co.*, 210 S.W.3d 584, 589 (Tenn. Ct. App. 2006).

The presumption of correctness in Tenn. R. App. P. 13(d) applies only to findings of fact, not conclusions of law. Accordingly, appellate courts review a trial court's resolution of legal issues without a presumption of correctness and reach their own independent conclusions regarding these issues. *Johnson v. Johnson*, 37 S.W.3d 892, 894 (Tenn. 2001); *Nutt v. Champion Int'l Corp.*, 980 S.W.2d 365, 367 (Tenn. 1998); *Knox County Educ. Ass'n v. Knox County Bd. of Educ.*, 60 S.W.3d 65, 71 (Tenn. Ct. App. 2001); *Placencia v. Placencia*, 48 S.W.3d 732, 734 (Tenn. Ct. App. 2000).

III.

We have carefully reviewed the relatively sparse record on appeal. Ms. Tate was either pushed by the other nursing home resident who was found in her room – which seems doubtful – or Ms. Tate fell on her own while in one of her frequent agitated states of mind. However, the other resident in Ms. Tate's room had no history of aggressive behavior toward other patients such as Ms. Tate, and the evidence did not preponderate in favor of a finding that Ms. Tate was more prone to falling when she was in an agitated state than she was otherwise.

It is sad when anyone suffers a serious fall, particularly when the individual involved is, like Ms. Tate, elderly and seriously physically and mentally ill. Unfortunately, accidents do happen, and in this case, Ms. Hamilton utterly failed to prove that negligence on the part of the Authority or its employees was the proximate cause of Ms. Tate's fall. While we certainly feel sympathy for Ms. Tate and Ms. Hamilton, we decline to fashion a new rule of tort law that would essentially force nursing homes to strap all Alzheimer's patients who exhibit agitation to their beds in order to avoid lawsuits for purely accidental falls.

IV.

We affirm the trial court's January 3, 2006 judgment in favor of the Metropolitan Hospital Authority and remand this case for any further proceedings that may be necessary. We tax the costs of this appeal to Barbara Hamilton and her surety for which execution, if necessary, may issue.

_____

WILLIAM C. KOCH, JR., P.J., M.S.